

**THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

|                                    |   |                               |
|------------------------------------|---|-------------------------------|
| In re: TESTOSTERONE                | ) | Case No. 1:14-CV-01748        |
| REPLACEMENT THERAPY                | ) | MDL No. 2545                  |
| PRODUCTS LIABILITY LITIGATION      | ) |                               |
|                                    | ) |                               |
| This document relates to all cases | ) | Honorable Matthew F. Kennelly |

**CASE MANAGEMENT ORDER # 87**  
**(TRIAL SELECTION PLAN AND SCHEDULE)**

In furtherance of the advancement of this MDL, the Court hereby Orders:

**I. PROTOCOL FOR SELECTION OF TRIAL GROUP CASES**

In addition to the bellwether pools and trials previously established pursuant to CMOs 14, 31, 32, 33, 61, 75, and 79 this Order provides for the selection of groups of cases that will be trial ready on a staggered schedule by August 1, 2018 (“Trial Group 1”), January 1, 2019 (“Trial Group 2”), and July 1, 2019 (“Trial Group 3”). The protocol for selecting the Trial Groups will be:

- A. The Trial Groups will consist of the following number of cases
  - 1. Trial Group 1: 12 cases (8 AbbVie cases, 2 Auxilium cases, 2 Lilly cases).
  - 2. Trial Group 2: 24 cases (14 AbbVie cases, 4 Auxilium cases, 2 Lilly cases, 2 Actavis cases, 2 Endo cases)
  - 1. Trial Group 3: 46 cases (28 AbbVie cases, 8 Auxilium cases, 4 Lilly cases, 4 Actavis cases, 2 Endo cases)
- B. Plaintiffs and Defendants will each select half of each type of case in each pool.

No advance meet-and-confer is required.

C. The parties should attempt to select cases involving usage of a single TRT product only. If a case that is selected turns out to involve usage of more than one TRT product, the Court reserves the right to keep it in the pool.

## **II. SCHEDULE FOR SELECTION OF TRIAL GROUPS**

Trial Group selections must be exchanged on the following dates:

- A. Trial Group 1: December 21, 2017
- B. Trial Group 2: February 1, 2018
- C. Trial Group 3: April 2, 2018

## **III. REQUIREMENTS FOR ALL TRIAL GROUPS**

A. Trial Selection: The final selection of which cases will be tried and in what sequence will be made by the Court after considering submissions by the parties describing the cases and why they should or should not be tried and in what sequence. Those submissions are due to the Court seven (7) days after the close of expert discovery in any Trial Group. The Court will endeavor to issue its ruling within five (5) days of receipt of the submissions.

Treating Physicians: Within three (3) days of a Defendant notifying a Plaintiff of a treating physician it wants to depose, Plaintiff must notify Defendant whether Plaintiff will endeavor to handle the scheduling of the deposition. If Plaintiff fails to respond or elects not to handle the scheduling, Defendant will do so. If Plaintiff elects to handle the scheduling, Plaintiff will report to Defendant within seven (7) days on the progress of scheduling and at that point if the deposition is not scheduled, Defendant has the option to pursue the scheduling on its own.

Except with regard to this scheduling procedure, all other provisions of CMO 27 regarding contacts with treating physicians remain in full force and effect.

B. Pleadings: Answers and Notices of Affirmative Defenses should be filed or, if already filed, supplemented, within 21 days of selection of a case for Trial Group. Any further

amendments to complaints or answers will require a stipulation or motion to the Court. The deadline for seeking leave to amend a pleading is 42 days before the close of fact discovery.

C. Experts:

1. The parties intend that the limitations on expert discovery set forth in Rule 26 of the Federal Rules of Civil Procedure, including the provision of Rule 26(b)(4)(A)-(D) limiting discovery with respect to draft reports, communications with experts, and depositions of consulting experts, shall apply to all cases, whether pending in state or federal court.

Accordingly, in order to foster cooperation between the MDL and state court litigations, counsel for the parties shall jointly seek to enter in all state court proceedings, whether already filed or hereafter filed, an order expressly agreeing that the limitations on expert discovery set forth in Rule 26(b)(4)(A)-(D) shall apply in all such state court proceedings. The parties shall seek to avoid duplicative expert discovery for experts.

2. The parties may, if they wish, retain new experts for litigation of the three new trial groups. If the parties use experts who have previously served Rule 26(a)(2) disclosures in this litigation, the Court expects counsel to work out, by agreement, whether those experts may simply supplement their previous reports or instead will submit new reports.

**IV. PRE-TRIAL SCHEDULES**

A. Trial Group 1:

1. Supplemental PFSs shall be completed and submitted within 10 days following selection of the Trial Group 1 cases.

2. Defense Fact Sheets shall be completed and submitted within 30 days following the selection of the Trial Group 1 cases

3. Production of sales representative and/or sales manager files will be produced within 28 days of any request.

4. Fact discovery

5. shall be completed on or before April 2, 2018.

6. On or before April 16, 2018, Plaintiffs shall disclose expert witness testimony for each of the trial cases pursuant to Fed. R. Civ. P. 26(a)(2).

7. On or before April 23, 2018, Defendants shall disclose expert witness testimony for each of the initial bellwether trial cases pursuant to Fed. R. Civ. P. 26(a)(2).

8. Any rebuttal expert witness disclosures must be made by April 30, 2018 and require prior leave of Court.

9. Depositions of expert witnesses are to be completed by May 31, 2018. The parties will work cooperatively and use all best efforts to schedule the depositions of Plaintiffs' experts on a particular subject to take place before the corresponding defense expert.

10. Any motion for summary judgment or for partial summary judgment or seeking to challenge expert testimony pursuant to *Daubert* shall be filed on or before June 14, 2018.

11. Responses to summary judgment motions and *Daubert* motions shall be filed on or before July 12, 2018.

12. Replies in support of summary judgment motions and *Daubert* motions shall be filed on or before July 26, 2018.

B. Trial Group 2

1. Supplemental PFSs shall be completed and submitted within 28 days following the selection of the Trial Group 2 cases.

2. Defense Fact Sheets shall be completed and submitted within 45 days following the selection of the Trial Group 2 cases.

3. Production of sales representative and/or manager files will be produced within 28 days of any request.

4. Fact discovery shall be completed on or before August 3, 2018.

5. On or before August 24, 2018, Plaintiffs shall disclose expert witness testimony for each of the trial cases pursuant to Fed. R. Civ. P. 26(a)(2).

6. On or before September 14, 2018, Defendants shall disclose expert witness testimony for each of the initial bellwether trial cases pursuant to Fed. R. Civ. P. 26(a)(2).

7. Any rebuttal expert witness disclosures are to be completed by September 26, 2018 with prior leave of Court.

8. Depositions of expert witnesses are to be completed by November 2, 2018 October 15, 2018. The parties will work cooperatively and use all best efforts to schedule the depositions of Plaintiffs' experts on a particular subject to take place before the corresponding defense expert.

9. Any motion for summary judgment or for partial summary judgment or seeking to challenge expert testimony pursuant to *Daubert* shall be filed on or before November 16, 2018.

10. Responses to summary judgment motions and *Daubert* motions shall be filed on or before December 14, 2018.

11. Replies in support of summary judgment motions and *Daubert* motions shall be filed on or before December 24, 2018.

C. Trial Group 3:

1. Supplemental PFSs shall be completed and submitted within 30 days following the selection of the Trial Group 3 cases.

2. Defense Fact Sheets shall be completed and submitted within 45 days following the selection of the Trial Group 3 cases.

3. Production of sales representative and/or manager files will be produced within 28 days of any request.

4. Fact discovery shall be completed on or before January 11, 2019.

5. On or before February 1, 2019, Plaintiffs shall disclose expert witness testimony for each of the trial cases pursuant to Fed. R. Civ. P. 26(a)(2).

6. On or before March 1, 2019, Defendants shall disclose expert witness testimony for each of the initial bellwether trial cases pursuant to Fed. R. Civ. P. 26(a)(2).

7. Any rebuttal expert witness disclosures are to be completed by March 12, 2019 with prior leave of Court.

8. Depositions of expert witnesses are to be completed by May 7, 2019. The parties will work cooperatively and use all best efforts to schedule the depositions of Plaintiffs' experts on a particular subject to take place before the corresponding defense expert.


9. Any motion for summary judgment or for partial summary judgment or seeking to challenge expert testimony pursuant to *Daubert* shall be filed on or before May 24, 2019.

10. Responses to summary judgment motions and *Daubert* motions shall be filed on or before June 14, 2019.

11. Replies in support of summary judgment motions and *Daubert* motions shall be filed on or before June 28, 2019.

IT IS SO ORDERED.

December 11, 2017

  
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MATTHEW F. KENNELLY  
UNITED STATES DISTRICT JUDGE